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# Miki ak Jinop (suing on behalf of the estate of Kosit ak Miow, deceased) v Septimus Amit ak Miaw

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HIGH COURT (KUCHING) — SUIT NO KCH-22NCvC–2/1 OF 2015
RHODZARIAH BUJANG J
17 JUNE 2015

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*Limitation — Accrual of cause of action — When cause of action accrued — Land matters — Claim over land — Application to strike out claim — Whether relevant laws or customs pleaded — Whether claim statute barred — Administration of Estates Ordinance s 17*

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The plaintiff filed an action for an order that his uncle, the defendant, transfers 1/6 share of a lot of land ('Lot 412') to the estate of the former's late mother, for which he was the administrator of. Lot 412 was part of the estate of the defendant's late grandfather ('Sileng'). When Sileng died intestate in 1967, letters of administration was granted to the defendant. The plaintiff contended that her late mother had beneficial interest in the said Lot 412 according to Bidayuhs custom and that her late mother and now her own family still have their house, paddy field and fruit orchards on the said land. The plaintiff further contended that the defendant had transferred two other parcels of land in Sileng's estate to himself instead of distributing them to the other beneficiaries of Sileng ie the 20 defendant's own siblings. In his defence to the action, the defendant argued that the plaintiff's action was statute barred under Item 99 of the Schedule to the Limitation Ordinance and in addition also pleaded, inter alia, that the plaintiff's continued occupation of the land was without his leave or licence. The defendant filed this application to strike out the plaintiff's claim on the grounds that the plaintiff failed to plead the relevant law or custom that entitled the estate of her mother to a share in the said land and that claim was statute barred. In opposing the application, the plaintiff replied that her late mother's entitlement to the land was by virtue of Bidayuhs custom under s 17 of the Administration of Estates Ordinance and in respect of the statute of limitation, the right to sue only accrues when the defendant transfers the said land to himself in September 2014.

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**Held**, allowing the application to strike out:

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(1) The plaintiff did not identify the particular custom of the Bidayuhs which entitled her late mother to a share in the late Sileng's estate which was quite unfortunate and inexcusable because the customs of the Bidayuhs were codified and a bit of diligence would have unearthed the relevant provision of the Code which applied in this case (see para 5).

(2) Limitation period ran from the day the administrator had to distribute the residue of the deceased's estate for that was when the legacy or share became payable or deliverable as provided in the said Item 99. In this case, given the absence of any evidence of any non-payment of debts due from Sileng, the countdown of the limitation periods starts when the letters of administration was issued and it was 26 August 1976. The plaintiff's action was filed some 38 years after the issuance of the said letters and was clearly out of time (see para 7).

**[Bahasa Malaysia summary**

Plaintif memfailkan tindakan untuk perintah bahawa bapa saudaranya, defendan, memindahkan 1/6 syer lot tanah ('Lot 412') kepada estet mendiang ibunya, yang mana dia adalah pentadbir. Lot 412 adalah sebahagian daripada estet mendiang datuk defendan ('Sileng'). Apabila Sileng meninggal dunia tanpa wasiat pada tahun 1967, surat-surat pentadbiran diberikan kepada defendan. Plaintif berhujah bahawa mendiang ibunya mempunyai kepentingan benefisiari dalam Lot 412 tersebut mengikut adat Bidayuh dan bahawa mendiang ibunya dan keluarganya masih mempunyai rumah mereka, sawah padi dan ladang buah-buahan di atas tanah tersebut. Plaintif selanjutnya berhujah bahawa defendan telah memindahkan dua petak tanah dalam estet Sileng kepada dirinya bukan membahagikannya kepada benefisiari Sileng yang lain iaitu 20 adik beradik defendan sendiri. Dalam pembelaannya kepada tindakan tersebut, defendan berhujah bahawa tindakan plaintif adalah dihalang statut di bawah Item 99 Jadual kepada Ordinan Had Masa dan dalam tambahan juga memplid, antara lain, bahawa penghunian berterusan plaintif di tanah tersebut adalah tanpa kebenaran atau lesennya. Defendan memfailkan permohonan ini untuk membatalkan tuntutan plaintif atas alasan bahawa plaintif gagal untuk memplid undang-undang atau adat relevan yang memberikan hak kepada estet ibunya kepada syer dalam tanah tersebut dan bahawa tuntutan adalah dihalang statut. Dalam membantah permohonan tersebut, plaintif menjawab bahawa hak mendiang ibunya kepada tanah tersebut adalah mengikut adat Bidayuh di bawah s 17 Ordinan Pentadbiran Harta Pusaka dan berkaitan statut had masa, hak untuk menyaman hanya terakru apabila defendan memindahkan tanah tersebut kepada dirinya sendiri pada September 2014.

**Diputuskan**, membenarkan permohonan untuk pembatalan:

(1) Plaintif tidak membuktikan adat tertentu Bidayuh mana yang memberikan hak kepada mendiang ibunya kepada syer di dalam estet mendiang Sileng yang mana adalah agak malang dan tidak dapat dimaafkan kerana adat Bidayuh dikanunkan dan dengan sedikit ketekunan akan membongkarkan peruntukan relevan Kod yang terpakai dalam kes ini (lihat perenggan 5).

(2) Tempoh had masa bermula dari hari pentadbir kena membahagikan baki estet si mati apabila harta peninggalan atau syer menjadi boleh dibayar atau boleh dihantar seperti yang diperuntukkan dalam Item 99 tersebut. Dalam kes ini, dengan ketiadaan apa-apa keterangan mengenai hutang-hutang yang tidak dibayar daripada Sileng, pengiraan detik permulaan tempoh had masa bermula apabila surat-surat pentadbiran dikeluarkan dan ia adalah 26 Ogos 1976. Tindakan plaintif difailkan lebih kurang 38 tahun selepas pengeluaran surat tersebut dan jelas di luar had masa (lihat perenggan 7). ]

**Notes**

For cases on when cause of action accrued, see 9 *Mallal's Digest* (5th Ed, 2015) paras 2254–2255.

**Cases referred to**

*Zaini bin Lazen @ Lazem & Anor vs Fathi bin Suria* [2007] MLJU 606, HC (refd)

**Legislation referred to**

Administration of Estates Ordinance ss 17, 17(c)
Limitation Ordinance Item 99

*Wit Malang (Wit & Co Advocates) for the plaintiff.*
*Benard @ Bernard ak Philip Lanat ( BP Lanat & Co Advocates) for the defendant.*

**Rhodzariah Bujang J:**

**[1]** The plaintiff has filed this action for an order that the defendant transfers 1/6th share of Lot 412 Block 10 Gading-Lundu Land District (formerly known as Lundu Occupation Ticket No 2447) to the estate of one Kosit ak Miow who was his late mother and for which he is the administrator of her estate. Lot 412 was part of the estate of one Sileng ak Merai. Sileng ak Merai was the late grandfather of the defendant and the plaintiff's late mother which therefore makes the defendant the uncle of the plaintiff. When Sileng died intestate in 1967, letters of administration was granted to the defendant on 26 August 1976. The plaintiff contended in her amended statement of claim that her late mother, Kosit ak Miow has beneficial interest in the said Lot 412 according to Bidayuh custom and that her late mother and now her own family still have their house, paddy field and fruit orchards on the said land. She also pleaded in para 5 of the statement of claim that the defendant has transferred two other parcels of land in Sileng's estate to himself instead of distributing them to the other beneficiaries of Sileng ie the defendant's own siblings.

**[2]** In his defence to the action the defendant pleaded that the plaintiff's

action is statute barred under Item 99 of the Schedule to the Limitation Ordinance and in addition also pleaded, inter alia, that the plaintiff's continued occupation of the land is without his leave or licence. I pause here to note that he has in fact applied for summary possession of the land which is still pending hearing before me as I had, on 11 May 2015, just about two weeks before the delivery of this ruling, dismissed an application filed by the plaintiff herein to stay the said application. I have also noted in my grounds of decision for that application that the plaintiff's caveat lodged against Lot 412 has been removed by order of the court on 14 February 2014.

**[3]** The defendant has now filed this application to strike out the plaintiff's claim on the grounds that the plaintiff has failed to plead the relevant law or custom that entitles the estate of her mother to a share in the said land and that claim is statute barred, as pleaded by him in his statement of defence.

**[4]** In her opposition to the application, the plaintiff replied that her late mother's entitlement to the land is by virtue of adat Bidayuh under s 17 of the Administration of Estates Ordinance and in respect of the statute of limitation, the right to sue only accrues when the defendant transfers the said land to himself in September 2014 and referred to 'Exhibit SAM-7 to the defendant's originating summons', without specifying what this 'originating summons' is all about. This failure, I must add does no justice to her own cause, regardless of the fact that the defendant did not respond to the said affidavit.

SECTION 17 OF THE ADMINISTRATION OF ESTATES ORDINANCE

**[5]** This spells out the duties of an administrator upon obtaining the letters of administration which are, and the relevant provision here is s 17(c), distribute the residue of the estate, after discharging all the debts due to the deceased which are legally recoverable among the beneficiaries or heirs of the deceased in accordance to the shares to which they are entitled by recognised law or custom. The plaintiff did not identify the particular custom of the Bidayuhs which entitles her late mother to a share in the late Sileng's estate which is quite unfortunate and inexcusable because the customs of the Bidayuhs are codified and a bit of diligence would have unearthed the relevant provision of the Code which applies in this case.

**[6]** As for Item 99 of the Limitation Ordinance, the said Item provides as follows:

| 1st Column | 2nd Column Description of Limitation | 3rd Column Period of Limitation | 4th Column Time for which period begins to run |
|---|---|---|---|
| 99 | For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate. | Twelve years | When the legacy or share becomes payable or deliverable. |

**[7]** It is obvious from the clear wordings of this section read with s 17(c) of the Administration of Estate Ordinance that the 12 years limitation period runs from the day the administrator has to distribute the residue of the deceased's estate for that is when the legacy or share becomes payable or deliverable as provided in the said Item 99. In this case, given the absence of any evidence of any non-payment of debts due from the late Sileng, the countdown of the limitation periods starts when the letters of administration was issued and it is 26 August 1976. The plaintiff's action herein, filed some 38 years after the issuance of the said letters is clearly out of time.

**[8]** Mr Wit Malang for the plaintiff has submitted to me a decision of Hamid Sultan JC (as His Lordship then was) in *Zaini bin Lazen @ Lazem & Anor vs Fathi bin Suria* [2007] MLJU 606 where His Lordship held that the Limitation Ordinance does not cater for the time limit to bring an action in relation to or pursuant to the Administration of Estate Ordinance because His Lordship could not find a specific provision in the Limitation Ordinance for it. The said case concerned an action brought by the beneficiaries of an estate against its administrator who instead of distributing the property in the estate of the deceased to these beneficiaries, transferred it to his own grandchildren for natural love and affection. This he did without the consent and knowledge of the said beneficiaries. With the greatest of respect to His Lordship, Item 99 as reproduced above is in my view, enacted with the Administration of Estate Ordinance in mind.

**[9]** I would therefore allow the application to strike out her action and given the simplicity of the facts and issue, I do so with cost agreed at RM750 only.

A *Application to strike out allowed.*

Reported by Afiq Mohamad

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